IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Shyam Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.1178/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 13-8-2003 in Sessions Case No.72/2002 (40/2002) passed by Sh. P.D.Gupta, RHJS, Additional Sessions Judge (Fast Track) Hindaun City District Karauli.

Date of Judgment: September 12, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. S.C.Gupta, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

On March 10, 2002 around 1.30 PM while Shyam Singh, appellant herein, was sitting inside a tea-shop, Harji a milk vendor (since deceased) arrived and demanded payment which was due against the appellant for the milk supplied to him. After hot exchanges, appellant caught hold of Harji from neck and pressed it as a result of which Harji died. The appellant was put to trial before learned Additional Sessions Judge, (Fast Track) Hindaun City District Karauli, who vide judgment dated August 13, 2003 convicted and sentenced the appellant under section 302 to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for three months.

2. Informant Sinna (Pw.5) handed over a written report of the incident at the Police Station Hindaun City. On that report case under sections 302/34 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun City District Karauli. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 11 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. Death of Harji was undeniably homicidal in nature. A look at Post Mortem Report (Ex.P-8) reveals that following ante mortem injuries were found on the dead body:-

> 1. Red Bruise 1.5cm x 1cm on right side of neck below angle of mandible on right side lying higher than the contusion present to front of neck.
> 2. Red bruise 1cm x .5cm on left side of neck below angle of mandible on left side.
> 3. Red contusion 4.5cm x 2cm on front of neck below the ados apparatus Semi circular in shape both endirected upwards.

In the opinion of Dr. Umesh Gupta (Pw.9) the cause of death was asphyxia due to throttling.

4. The only contention of learned counsel for the appellant is that

since the incident occurred all of sudden and the appellant had no intention to kill the deceased, the appellant could not have been convicted and sentenced under section 302 IPC. Learned Public Prosecutor however opposed this contention and urged that intention of appellant to kill the deceased can be gathered from the circumstances.

5. Having analyzed the statements of Mangal Bai (Pw.3) and Ram Niwas (Pw.2), we find that incident occurred on a spur of moment. Ram Niwas in his deposition stated thus:-

> "श्याम से हरजी ने दूध के पैसे मांगे। इनमें कहासुनी हो गई फिर श्याम ने हरजी की गर्दन पकडी और नीचे पटक दिया और दो तीन लात दी और फिर भाग गया फिर हरजी खत्म हो गया।"

6. The Fourth exception to Section 300 IPC covers acts done in a sudden fight. The term `fight' occurring in Exception-4 is not defined in the Indian Penal Code. `Fight' postulates a bilateral transaction in which blows are exchanged. The help of Exception-4 can be availed if death is caused:-

(i) without premeditation;
(ii) in a sudden fight;
(iii) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and
(iv) the fight must have been with the person killed.

7. In the case on hand there was no premeditation while the appellant was sitting inside the tea-shop, the deceased suddenly arrived and demanded dues from the appellant. Altercations ensued and both grappled each other. The appellant caught hold of the deceased from the neck and pushed him down. The appellant did the act in a heat of passion. He neither

took undue advantage of the situation nor acted in a cruel or unusual manner. This fact situation brings this case within the ambit of Exception 4 to Section 300 IPC.

8. For these reasons, we partly allow the appeal and instead of section 302 we convict appellant under section 304 Part II IPC. Looking to the fact that the appellant has already suffered confinement for a period of more than five years, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Shyam Singh, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case. The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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